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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAIMEE ISRAEL FRANKLIN, Defendant and Appellant.	B290617 (Los Angeles County Super. Ct. No. TA136616)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Shultz, Judge. Affirmed.

Laura Sheppard, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jaimee Israel Franklin appeals from the judgment imposing a previously suspended sentence as a result of a probation violation. His counsel filed an opening brief that raised no issues and requested independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On November 21, 2018, we sent appellant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. On the same day, appellant's counsel filed a motion to augment the record with transcripts from a 911 call and a recording from a police officer's body camera. We granted that request. On April 3, 2019, appellant's counsel filed a letter stating that the augmented transcript had not revealed any issues and requesting to submit the matter on the prior *Wende* brief. Appellant has not filed a response with the court.

I. *Background*

On May 13, 2015, appellant pled guilty to one count of robbery of a former girlfriend, in violation of Penal Code section 211.[1] He was sentenced to five years formal probation, including serving 365 days in jail and completion of a domestic violence program.

On December 2, 2015, the court revoked appellant's probation and issued a bench warrant due to his failure to appear and provide proof of enrollment in the domestic violence program. Appellant admitted to the probation violation at a hearing on June 20, 2017. The court reinstated probation but added a suspended sentence of three years in jail.

On February 22, 2018, appellant was arrested on suspicion of domestic violence with injury, in violation of section 273.5, subdivision (a). The court revoked appellant's probation and scheduled an evidentiary hearing regarding the alleged probation violation.

The following evidence was presented at the probation violation hearing on May 24 and 25, 2018:

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[1] All further statutory references herein are to the Penal Code unless otherwise indicated.

On February 12, 2018, at about 1:30 p.m., Cheyenne W.[2] called 911 to report that appellant, her boyfriend, had just hit her "in the face."[3] Cheyenne also told the operator that she was outside her home and "sitting in my car cuz I'm scared." When the operator asked where her boyfriend was, she responded, "He's in the house he's picking up his stuff and I just ran out me and my baby [*sic*]." Cheyenne said she did not need an ambulance and that she was "going to go to my grandma's house." The operator directed her to wait in her car and that they would "send an officer right away."

Officer Alan Woodard of the Los Angeles Police Department testified that he responded to the 911 call and arrived at the victim's residence shortly after 3:00 p.m. His interactions were recorded on a body worn camera.

First, Officer Woodard spoke briefly with Cheyenne's friend or sister, who told him that Cheyenne would speak to the police "when she gets herself together," and that she was "trying to figure out how she wants to go about things. Basically she's trying to gather her thoughts." Some time later, Officer Woodard spoke to Cheyenne, who was "crying and visibly upset." Cheyenne told him that she "just got in a fight with my boyfriend," and he "left, I don't know where he went." She also told Officer Woodard that appellant was "mad about something and he turned and hit me . . . in my face and arms." Officer Woodard also asked about a scratch on Cheyenne's hand and she said she sustained it when she fought back. She also told the officer that her one-year-old son was present during the incident. She planned to leave the apartment she shared with appellant and stay with her grandmother.

The prosecution also presented photographs taken of the injuries to Cheyenne, including a scratch on her knuckle, a broken fingernail, and a scratch on her hip.

The defense presented testimony from a defense investigator, Steve Lewis, who testified that he interviewed Cheyenne over the telephone.

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[2] Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to the victim in this case by first name to protect her privacy. No disrespect is intended.

[3] Cheyenne did not testify at the hearing, but the recording and transcript of her 911 call was admitted over defense counsel's objection.

According to Lewis, Cheyenne told him that she became angry after seeing pictures and texts from other women on appellant's phone. She stated she confronted appellant and then she punched a wall with her fist and broke a nail. She then called the police and lied, saying that appellant had assaulted her. Lewis testified that Cheyenne seemed sincere when she said that appellant had never slapped or choked her and she lied to the police because she was jealous and upset.

Appellant also testified that he had never hit Cheyenne. He stated he and Cheyenne had a verbal argument on February 12, 2018 after she saw texts to and pictures of other women on his phone. Cheyenne became angry, grabbed his shirt, threw the remote control at him, and then punched the wall of their apartment. She also told him she was going to call the police and send him back to jail. Appellant denied any domestic violence against Cheyenne and denied being violent in any past relationships. He left the apartment after the argument to go to his brother's house to do laundry. He testified that he was five-foot-eight inches and weighed 120 pounds, while Cheyenne was five-foot-nine inches and weighed 186 pounds.

Defense counsel objected to the admission of the 911 call and the body camera footage as testimonial hearsay inadmissible under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). She further argued the evidence did not qualify as spontaneous statements under Evidence Code section 1240. The court admitted the 911 call, finding Cheyenne's statements to the 911 operator were spontaneous and nontestimonial. The court originally excluded the body camera footage, finding that the prosecutor had not made an adequate showing under *Crawford*. The court also excluded Officer Woodard's testimony describing how Cheyenne was injured, based on the prior ruling excluding the body camera footage.

However, after the defense introduced Lewis's testimony to impeach Cheyenne's statements from the 911 call, the prosecution again sought to admit the body camera footage, arguing that the defense had opened the door and the footage was admissible as a prior consistent statement under Evidence Code sections 1202 and 1236. When the hearing resumed the next day, the court announced it had researched the matter overnight and "carefully" reviewed Evidence Code section 1202. The court found Lewis's

testimony and most of the body camera footage admissible for credibility purposes only, as prior inconsistent and consistent statements. The court also concluded that the first few minutes of the footage were admissible for their truth as spontaneous statements and as nontestimonial hearsay.[4] The court noted that despite some passage of time, Cheyenne was still sitting in the car and crying during her initial statements to Officer Woodard, that she had her small child with her, and that the initial questions by Officer Woodard were posed to "just figure out what's happening, where people are."

At the conclusion of the hearing, the court found appellant in violation of his probation. The court noted that the photographs of Cheyenne's injuries were "actually more consistent with the defendant's testimony that she punched a wall than he caused the injury." Nevertheless, the court found by a preponderance of the evidence that appellant hit Cheyenne. The court observed from the body camera footage that Cheyenne appeared to be in pain while describing the injuries to her face to Officer Woodard. The court also relied on the 911 call, and found those statements by Cheyenne more credible than appellant's denial of the incident. In addition, the court found that appellant's "prior act of domestic violence that he's on probation for" was relevant to appellant's credibility, and was admissible as evidence of a prior instance of domestic violence.

The court terminated probation and imposed appellant's previously suspended sentence of three years in custody. Appellant timely appealed.

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[4] Citing *People v. Johnson* (2004) 121 Cal.App.4th 1409, the court recognized that *Crawford* does not govern probation revocation proceedings, as "[p]robationers' limited right to confront witnesses at revocation hearings stems from the due process clause of the Fourteenth Amendment, not from the Sixth Amendment." (*Id.* at p. 1411, citing *Black v. Romano* (1985) 471 U.S. 606, 610, 612.) Nevertheless, the court indicated it was looking to the Sixth Amendment analysis under *Crawford* for guidance. (See *People v. Johnson, supra*, 121 Cal.App.4th at p. 1412 ["Sixth Amendment cases . . . may provide helpful examples in determining the scope of the more limited right of confrontation held by probationers under the due process clause."]; see also *People v. Arreola* (1994) 7 Cal.4th 1144, 1158.)

II. *Wende review*

We have independently reviewed the entire record. We are satisfied that no arguable issues exist and appellant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

DISPOSITION

The judgment is affirmed.

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COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.